

SENATE BILL 17

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2003 Regular Session
3lr0547

By: **Senator Della**

Introduced and read first time: January 13, 2003

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2003

CHAPTER _____

1 AN ACT concerning

2 **Maryland Health Care Foundation - Repeal**

3 FOR the purpose of terminating the Maryland Health Care Foundation; altering
4 certain provisions of law relating to the Maryland Health Care Trust; altering
5 the trustees of the Maryland Health Care Trust and providing for the State
6 Treasurer to be the trustee of the Trust; requiring the Maryland Medbank
7 Program to be administered by the Department of Health and Mental Hygiene;
8 requiring the Department to contract with certain entities to operate the
9 Program; requiring the Department to ensure that the Program is available to
10 residents in certain geographic regions of the State; requiring the Department to
11 use certain regional offices; requiring the Department to require certain
12 financial reports from entities that operate the Program; requiring the
13 Department to release funds to certain entities; requiring the Department to
14 submit a certain report; extending a certain termination date for the Maryland
15 Medbank Program; providing for the termination of certain provisions of this
16 Act; and generally relating to the termination of the Maryland Health Care
17 Foundation.

18 BY repealing

19 Article - Health - General

20 Section 15-305; and 20-501 through 20-510, inclusive, and the subtitle

21 "Subtitle 5. Maryland Health Care Foundation"

22 Annotated Code of Maryland

23 (2000 Replacement Volume and 2002 Supplement)

24 BY repealing

25 Chapter 701 of the Acts of the General Assembly of 2001

1 Section 2

2 BY repealing and reenacting, with amendments,
3 Article - Health - General
4 Section 15-101 and 15-124.2
5 Annotated Code of Maryland
6 (2000 Replacement Volume and 2002 Supplement)

7 BY repealing and reenacting, with amendments,
8 Chapter 134 of the Acts of the General Assembly of 2001, as amended by
9 Chapter 153 of the Acts of the General Assembly of 2002
10 Section 12

11 BY repealing and reenacting, with amendments,
12 Chapter 135 of the Acts of the General Assembly of 2001, as amended by
13 Chapter 153 of the Acts of the General Assembly of 2002
14 Section 12

15 BY repealing and reenacting, with amendments,
16 Article - State Government
17 Section 6.5-301
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2002 Supplement)

20 BY adding to
21 Article - State Government
22 Section 6.5-401 to be under the new subtitle "Subtitle 4. Maryland Health Care
23 Trust"
24 Annotated Code of Maryland
25 (1999 Replacement Volume and 2002 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That Section(s) 15-305; and 20-501 through 20-510, inclusive, and the
28 subtitle "Subtitle 5. Maryland Health Care Foundation" of Article - Health - General
29 of the Annotated Code of Maryland be repealed.

30 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 2 of Chapter
31 701 of the Acts of the General Assembly of 2001 be repealed.

32 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
33 read as follows:

1

Article - Health - General

2 15-101.

3 (a) In this title the following words have the meanings indicated.

4 (a-1) "Dental managed care organization" means a pre-paid dental plan that
5 receives fees to manage dental services.6 (a-2) "Dental services" means diagnostic, emergency, preventive, and
7 therapeutic services for oral diseases.8 (b) "Enrollee" means a program recipient who is enrolled in a managed care
9 organization.10 (b-1) "Expedited eligibility" means a streamlined eligibility process, conducted
11 by the local health departments, for medical assistance for children and pregnant
12 women under which an eligibility determination is made promptly, but not later than
13 10 working days after the date of application.14 (c) "Facility" means a hospital or nursing facility including an intermediate
15 care facility, skilled nursing facility, comprehensive care facility, or extended care
16 facility.17 (d) ["Foundation" means the Maryland Health Care Foundation established
18 under Title 20, Subtitle 5 of this article.19 (e)] (1) "Historic provider" means a health care provider, as defined in §
20 19-132 of this article, or a residential service agency licensed under Title 19, Subtitle
21 4A of this article, that, on or before June 30, 1995, had a demonstrated history of
22 providing services to program recipients, as defined by the Department in
23 regulations.24 (2) "Historic provider", to the extent the provider meets the
25 requirements in paragraph (1) of this subsection, shall include:

26 (i) A federal or State qualified community health center;

27 (ii) A provider with a program for the training of health care
28 professionals, including an academic medical center;29 (iii) A hospital outpatient program, physician, or advanced practice
30 nurse that is a Maryland Access to Care (MAC) provider;

31 (iv) A local health department;

32 (v) A hospice, as defined in Title 19, Subtitle 9 of this article;

33 (vi) A pharmacy; and

1 (vii) Any other historic provider designated in accordance with
2 regulations adopted by the Department.

3 [(f)] (E) "Managed care organization" means:

4 (1) A certified health maintenance organization that is authorized to
5 receive medical assistance prepaid capitation payments; or

6 (2) A corporation that:

7 (i) Is a managed care system that is authorized to receive medical
8 assistance prepaid capitation payments;

9 (ii) Enrolls only program recipients or individuals or families
10 served under the Maryland Children's Health Program; and

11 (iii) Is subject to the requirements of § 15-102.4 of this title.

12 [(g)] (F) "Ombudsman program" means a program that assists enrollees in
13 resolving disputes with managed care organizations in a timely manner and that is
14 responsible, at a minimum, for the following functions:

15 (1) Investigating disputes between enrollees and managed care
16 organizations referred by the enrollee hotline;

17 (2) Reporting to the Department:

18 (i) The resolution of all disputes;

19 (ii) A managed care organization's failure to meet the Department's
20 requirements; and

21 (iii) Any other information specified by the Department;

22 (3) Educating enrollees about:

23 (i) The services provided by the enrollee's managed care
24 organization; and

25 (ii) The enrollee's rights and responsibilities in receiving services
26 from the managed care organization; and

27 (4) Advocating on behalf of the enrollee before the managed care
28 organization, including assisting the enrollee in using the managed care
29 organization's grievance process.

30 [(h)] (G) "Primary mental health services" means the clinical evaluation and
31 assessment of services needed by an individual and the provision of services or
32 referral for additional services as deemed medically appropriate by a primary care
33 provider.

1 [(i)] (H) "Program" means the Maryland Medical Assistance Program.

2 [(j)] (I) "Program recipient" means an individual who receives benefits under
3 the Program.

4 [(k)] (J) "Specialty mental health services" means any mental health services
5 other than primary mental health services.

6 **Chapter 134 of the Acts of 2001, as amended by Chapter 153 of the Acts of**
7 **2002**

8 ~~SECTION 12. AND BE IT FURTHER ENACTED, That Sections 3 and 4 of~~
9 ~~this Act shall take effect July 1, 2001. On the earlier of the end of June 30, 2003, or~~
10 ~~the availability of comparable prescription drug benefits provided by Medicare under~~
11 ~~Title XVIII of the Social Security Act, as amended, with no further action required by~~
12 ~~the General Assembly, [Sections 3 and] SECTION 4 of this Act shall be abrogated and~~
13 ~~of no further force and effect. If comparable prescription drug benefits are provided by~~
14 ~~Medicare under Title XVIII of the Social Security Act, the Secretary of Health and~~
15 ~~Mental Hygiene shall notify the Department of Legislative Services, 90 State Circle,~~
16 ~~Annapolis, Maryland 21401 not later than 90 days before prescription drug benefits~~
17 ~~are to be provided.~~

18 SECTION 12. AND BE IT FURTHER ENACTED, That Section 3 of this Act
19 shall take effect July 1, 2001. [On] IT SHALL REMAIN EFFECTIVE FOR A PERIOD OF 5
20 YEARS AND, AT THE END OF June 30, [2003] 2006, with no further action required by
21 the General Assembly, Section 3 of this Act shall be abrogated and of no further force
22 and effect.

23 **Chapter 135 of the Acts of 2001, as amended by Chapter 153 of the Acts of**
24 **2002**

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35 SECTION 12. AND BE IT FURTHER ENACTED, That Section 3 of this Act
36 shall take effect July 1, 2001. [On] IT SHALL REMAIN EFFECTIVE FOR A PERIOD OF 5
37 YEARS AND, AT THE END OF June 30, [2003] 2006, with no further action required by
38 the General Assembly, Section 3 of this Act shall be abrogated and of no further force
39 and effect.

Article - State Government

2 6.5-301.

3 (a) The appropriate regulating entity may not approve an acquisition unless it
4 finds the acquisition is in the public interest.

5 (b) An acquisition is not in the public interest unless appropriate steps have
6 been taken to:

7 (1) ensure that the value of public or charitable assets is safeguarded;

8 (2) ensure that:

9 (i) the fair value of the public or charitable assets of a nonprofit
10 health service plan or a health maintenance organization will be distributed to the
11 [Maryland Health Care Foundation that was established in § 20-502 of the Health -
12 General Article] MARYLAND HEALTH CARE TRUST ESTABLISHED UNDER § 6.5-401 OF
13 THIS ARTICLE; or

14 (ii) 1. 40% of the fair value of the public or charitable assets of a
15 nonprofit hospital will be distributed to the [Maryland Health Care Foundation that
16 was established in § 20-502 of the Health - General Article] MARYLAND HEALTH
17 CARE TRUST ESTABLISHED UNDER § 6.5-401 OF THIS ARTICLE; and

18 2. 60% of the fair value of the public or charitable assets of a
19 nonprofit hospital will be distributed to a public or nonprofit charitable entity or trust
20 that is:

21 A. dedicated to serving the unmet health care needs of the
22 affected community;

23 B. dedicated to promoting access to health care in the
24 affected community;

25 C. dedicated to improving the quality of health care in the
26 affected community; and

27 D. independent of the transferee;

28 (3) ensure that no part of the public or charitable assets of the
29 acquisition inure directly or indirectly to an officer, director, or trustee of a nonprofit
30 health entity; and

31 (4) ensure that no officer, director, or trustee of the nonprofit health
32 entity receives any immediate or future remuneration as the result of an acquisition
33 or proposed acquisition except in the form of compensation paid for continued
34 employment with the acquiring entity.

35 (c) The regulating entity may determine that a distribution of assets of a
36 nonprofit health entity is not required under this section if the transaction is:

1 (1) determined not to be an acquisition;

2 (2) in the ordinary course of business; and

3 (3) for fair value.

4 (d) In determining fair value, the appropriate regulating entity may consider
5 all relevant factors, including, as determined by the regulating entity:

6 (1) the value of the nonprofit health entity or an affiliate or the assets of
7 such an entity that is determined as if the entity had voting stock outstanding and
8 100% of its stock was freely transferable and available for purchase without
9 restriction;

10 (2) the value as a going concern;

11 (3) the market value;

12 (4) the investment or earnings value;

13 (5) the net asset value; and

14 (6) a control premium, if any.

15 (e) In determining whether an acquisition is in the public interest, the
16 appropriate regulating entity shall consider:

17 (1) whether the transferor exercised due diligence in deciding to engage
18 in an acquisition, selecting the transferee, and negotiating the terms and conditions
19 of the acquisition;

20 (2) the procedures the transferor used in making the decision, including
21 whether appropriate expert assistance was used;

22 (3) whether any conflicts of interest were disclosed, including conflicts of
23 interest of board members, executives, and experts retained by the transferor,
24 transferee, or any other parties to the acquisition;

25 (4) whether the transferor will receive fair value for its public or
26 charitable assets;

27 (5) whether public or charitable assets are placed at unreasonable risk if
28 the acquisition is financed in part by the transferor;

29 (6) whether the acquisition has the likelihood of creating a significant
30 adverse effect on the availability or accessibility of health care services in the affected
31 community;

32 (7) whether the acquisition includes sufficient safeguards to ensure that
33 the affected community will have continued access to affordable health care; and

1 (8) whether any management contract under the acquisition is for fair
2 value.

3 (f) The public or charitable assets distributed to a public or nonprofit
4 charitable entity or trust in accordance with subsection (b)(2) of this section shall be
5 in the form of cash.

6 (g) The appropriate regulating entity shall determine whether a payment by a
7 nonprofit health entity, required under an agreement or contract for the acquisition of
8 a nonprofit health entity if the agreement or contract is broken by the nonprofit
9 health entity, is in the public interest.

10 SUBTITLE 4. MARYLAND HEALTH CARE TRUST.

11 6.5-401.

12 (A) (1) THERE IS A MARYLAND HEALTH CARE TRUST.

13 (2) THE TRUST IS A BODY CORPORATE, SUBJECT TO MODIFICATION OR
14 TERMINATION BY THE GENERAL ASSEMBLY.

15 (3) THE PURPOSE OF THE TRUST IS TO:

16 (I) BE OF GENERAL BENEFIT TO THE RESIDENTS OF THE STATE;

17 (II) BE CHARITABLE IN NATURE; AND

18 (III) ACCEPT AND RETAIN MONEYS FOR FUTURE EXPENDITURES TO
19 BE USED TO IMPLEMENT ACTS OF THE GENERAL ASSEMBLY, OTHER THAN THE STATE
20 BUDGET BILL, THAT:

21 1. IMPROVE THE HEALTH STATUS OF RESIDENTS OF THE
22 STATE; AND

23 2. SPECIFICALLY DIRECT THE USE OF ASSETS OF THE
24 TRUST.

25 (4) MONEYS EXPENDED FROM THE TRUST ARE SUPPLEMENTAL TO, AND
26 ARE NOT INTENDED TO TAKE THE PLACE OF, STATE FUNDS THAT WOULD
27 OTHERWISE BE APPROPRIATED BY THE STATE FOR THE IMPROVEMENT OF THE
28 HEALTH CARE STATUS OF THE RESIDENTS OF THE STATE.

29 (B) (1) THE STATE TREASURER SHALL BE THE TRUSTEE OF THE TRUST.

30 (2) THE POWERS AND DUTIES OF THE TRUST SHALL REST IN AND BE
31 EXERCISED BY THE TRUSTEE.

32 (C) THE POWERS AND DUTIES OF THE TRUST SHALL BE ESTABLISHED AND
33 MODIFIED SOLELY BY THE GENERAL ASSEMBLY.

1 (D) THE TRUST CONSISTS OF THE PUBLIC AND CHARITABLE ASSETS
2 RECEIVED AS A RESULT OF THE ACQUISITION OF A NONPROFIT HEALTH SERVICE
3 PLAN OR A NONPROFIT HEALTH MAINTENANCE ORGANIZATION, APPROVED BY THE
4 MARYLAND INSURANCE ADMINISTRATION ON OR AFTER JUNE 1, 2001, IN
5 ACCORDANCE WITH THIS TITLE.

6 (E) (1) THE STATE TREASURER SHALL MANAGE, INVEST, AND REINVEST
7 THE TRUST IN THE SAME MANNER THAT STATE FUNDS ARE INVESTED.

8 (2) THE TRUST SHALL BE HELD AND ACCOUNTED FOR SEPARATE AND
9 APART FROM THE FUNDS OF THE STATE.

10 (F) ANY INTEREST OR OTHER INVESTMENT EARNINGS OF THE TRUST SHALL
11 BE CREDITED AND PAID INTO THE TRUST.

12 (G) (1) THE TRUSTEE SHALL MAKE PROVISION FOR A SYSTEM OF
13 FINANCIAL ACCOUNTING, CONTROLS, AUDITS, AND REPORTS.

14 (2) THE TRUSTEE SHALL REPORT TO THE GOVERNOR AND, IN
15 ACCORDANCE WITH § 2-1246 OF THIS ARTICLE, TO THE GENERAL ASSEMBLY ON OR
16 BEFORE DECEMBER 1, 2003, AND ANNUALLY THEREAFTER ON THE STATUS OF THE
17 ASSETS OF THE TRUST.

18 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland
19 read as follows:

20 **Article - Health - General**

21 15-124.2.

22 (a) [(1)] In this [section the following words have the meanings indicated.

23 (2) "Foundation" means the Maryland Health Care Foundation
24 established under § 20-502 of this article.

25 (3)] SECTION, "Program" means the Maryland Medbank Program
26 established under this section.

27 (b) There is a Maryland Medbank Program.

28 (c) The purpose of the Program is to improve the health status of individuals
29 throughout the State who lack prescription drug coverage by providing access to
30 medically necessary prescription drugs through patient assistance programs
31 sponsored by pharmaceutical drug manufacturers.

32 (d) (1) Subject to paragraph (2) of this subsection, the Program shall be
33 administered by the [Foundation] DEPARTMENT.

34 (2) The [Foundation] DEPARTMENT shall contract with one or more
35 government or nonprofit entities to operate the Program.

1 (e) (1) The administration and operation of the Program shall be funded
2 through a grant provided by the Department.

3 (2) Program funds may be used in part to purchase interim supplies of
4 prescription drugs for enrollees who have applied to participate in a manufacturer's
5 patient assistance program but have not yet received the approved prescription drug.

6 (f) (1) The [Foundation] DEPARTMENT shall ensure that the Program is
7 available to residents in each of the following geographic regions of the State:

8 (i) Western Maryland;

9 (ii) The Eastern Shore;

10 (iii) The Baltimore metropolitan area;

11 (iv) The Maryland counties in the Washington, D.C. metropolitan
12 area; and

13 (v) Southern Maryland, including Anne Arundel County.

14 (2) The [Foundation] DEPARTMENT shall use Medbank of Maryland,
15 Inc. and the Western Maryland Prescription Program as the regional offices for the
16 Baltimore metropolitan area and Western Maryland, respectively.

17 (g) Eligibility for the Program shall be limited only by the criteria established
18 by pharmaceutical manufacturers for their patient assistance programs.

19 (h) (1) The [Foundation] DEPARTMENT shall require detailed financial
20 reports at least quarterly from the entities that operate the Program.

21 (2) The [Foundation] DEPARTMENT shall release funds to the entities
22 that operate the Program as needed and justified by the quarterly reports filed in
23 accordance with paragraph (1) of this subsection.

24 (i) On or before December 1, 2001, and annually thereafter, the [Foundation]
25 DEPARTMENT shall report to the Governor and, in accordance with § 2-1246 of the
26 State Government Article, to the General Assembly, on the status of the Maryland
27 Medbank Program established under this section, including:

28 (1) The number and demographic characteristics of the State residents
29 served by the Program;

30 (2) The types and retail value of prescription drugs accessed through the
31 Program;

32 (3) The nature and extent of outreach performed to inform State
33 residents of the assistance available through the Program; and

34 (4) The total volume and retail value of each brand name drug, by
35 manufacturer, accessed through the Program.

1 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect June 1, 2003. ~~On the earlier of the end of June 30, 2006, or the availability of~~
3 ~~comparable prescription drug benefits provided by Medicare under Title XVIII of the~~
4 ~~Social Security Act, as amended, with no further action required by the General~~
5 ~~Assembly, Section 4 of this Act shall be abrogated and of no further force and effect. If~~
6 ~~comparable prescription drug benefits are provided by Medicare under Title XVIII of~~
7 ~~the Social Security Act, the Secretary of Health and Mental Hygiene shall notify the~~
8 ~~Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401 not~~
9 ~~later than 90 days before prescription drug benefits are to be provided. Section 4 of~~
10 this Act shall remain effective for a period of 3 years and 1 month and, at the end of
11 June 30, 2006, with no further action required by the General Assembly, this Act shall
12 be abrogated and of no further force and effect.